



DEPARTMENT OF ENERGY

Amended Record of Decision for the Long-Term Management and Storage of Elemental Mercury

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The U.S. Department of Energy (DOE) is issuing this Amended Record of Decision (AROD) to amend its previous AROD for the long-term management and storage of elemental mercury published in the *Federal Register* on October 6, 2020. This AROD withdraws the decision to store at Waste Control Specialists (WCS) certain elemental mercury to which DOE accepts the conveyance of title pursuant to a legal settlement or proceeding.

ADDRESSES: For electronic copies of this Amended Record of Decision, the October 6, 2020, Amended Record of Decision, the December 6, 2019, Record of Decision, or any of the documents prepared under the National Environmental Policy Act (NEPA) related to long-term management and storage of elemental mercury, please go to the following website:

<https://www.energy.gov/nepa/nepa-documents>. For paper copies, please contact Dave Haught at DOE, Office of Environmental Management, Office of Waste Disposal (EM-4.22), 1000 Independence Avenue SW, Washington, DC 20585 or at David.Haught@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the management and storage of elemental mercury, please contact Dave Haught at David.Haught@hq.doe.gov or visit <https://www.energy.gov/em/long-term-management-and-storage-elemental-mercury>. For general information on the Office of Environmental Management's NEPA process, please contact Bill Ostrum, at William.Ostrum@hq.doe.gov and at (202) 586-2513.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Section 5(a)(1)-(2) of the Mercury Export Ban Act of 2008 (Pub. L. 110-414), and the Frank R. Lautenberg Chemical Safety for the 21st Century Act, (Pub. L. 114-182) (herein

together referred to as MEBA) (42 U.S.C. 6939f(a)(1)-(2)), the U.S. Department of Energy (DOE) was directed to designate and have operational a facility or facilities of DOE for the long-term management and storage of elemental mercury generated within the United States. On December 6, 2019, DOE published a record of decision (ROD) in the *Federal Register* (84 FR 66890) announcing DOE's decision to designate the Waste Control Specialists (WCS) site near Andrews, Texas, as a DOE facility for management and storage of up to 6,800 metric tons (7,480 tons) of elemental mercury pursuant to Section 5(a)(1) of MEBA. Two domestic generators of elemental mercury subsequently filed complaints in United States District Court challenging, among other things, the ROD designating the WCS site as a DOE facility for the long-term management and storage of elemental mercury (*Coeur Rochester, Inc. v. Brouillette et al.*, Case No. 1:19-cv-03860-RJL (D.D.C. filed December 31, 2019); *Nevada Gold Mines LLC v. Brouillette et al.*, Case No. 1:20-cv-00141-RJL (D.D.C. filed January 17, 2020)). On August 21, 2020, DOE and Nevada Gold Mines, LLC (NGM) executed a settlement agreement intended to resolve NGM's complaint in its entirety. Under the settlement agreement with NGM, DOE agreed to withdraw the designation of WCS as a facility of DOE for the purpose of long-term management and storage of elemental mercury, and DOE agreed to accept title to and store 112 metric tons of elemental mercury that is currently in temporary storage at NGM facilities. On October 6, 2020, DOE published an AROD in the *Federal Register* (85 FR 63105) withdrawing the designation of the WCS site pursuant to MEBA as the DOE facility for long-term management and storage of elemental mercury. In that October 6, 2020, AROD, DOE also decided to store at WCS certain elemental mercury to which DOE accepts the conveyance of title pursuant to a legal settlement or proceeding. DOE did not store mercury at WCS as a result of the AROD and is not currently storing any mercury at the WCS site. The lease agreement between DOE and WCS for management and storage of elemental mercury expired on June 4, 2021.

On May 24, 2021, DOE published in the *Federal Register* (86 FR 27838) a notice of intent to prepare a second Long-Term Management and Storage of Elemental Mercury Supplemental Environmental Impact Statement (Mercury Storage SEIS-II, DOE/EIS-0423-S2). This Mercury Storage SEIS-II would supplement both the 2011 Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury (DOE/EIS-0423) and the 2013 Supplemental Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury (DOE/EIS-0423-S1) by updating these previous analyses of potential environmental impacts and analyzing additional alternatives, in accordance with the National Environmental Policy Act (NEPA), and will inform DOE's decision related to designation of a facility or facilities for the long-term management and storage of elemental mercury as required in MEBA Section 5(a)(1).

To address the elemental mercury subject to the settlement agreement, on February 4, 2022, DOE issued a Request for Task Order Proposals seeking proposals to provide ancillary services for the interim long-term management and storage of up to 120 MT of elemental mercury. DOE will evaluate received proposals to determine how to proceed with the interim long-term management and storage of the elemental mercury for which DOE accepts title prior to designation of a long-term elemental mercury storage facility.

Amended Decision This AROD rescinds DOE's decision in the October 6, 2020, AROD to store at WCS certain elemental mercury to which DOE accepts the conveyance of title pursuant to a legal settlement or proceeding.

Signing Authority This document of the U.S. Department of Energy was signed on March 1, 2022, by William I. White, Senior Advisor for Environmental Management, Office of Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative

purposes only, and in compliance with the requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the U.S. Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on March 2, 2022.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

[FR Doc. 2022-04775 Filed: 3/4/2022 8:45 am; Publication Date: 3/7/2022]